

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

DATE OF DECISION: December 03 , 2010.

Parties Name

Ashok Kumar and others

...PETITIONERS.

VERSUS

State of Punjab and others

...RESPONDENTS

CORAM: Hon'ble Mr. Justice Jasbir Singh
Hon'ble Mr. Justice Augustine George Masih

PRESENT: Mr. Arun Jain, Sr. Adv., with Mr. Amit Jain,
Advocate, for the petitioners.

Mr. Manohar Lall, Addl. A.G., Punjab;

JASBIR SINGH, J. (oral)

JUDGMENT

This judgment will dispose of three petitions , i.e., Civil Writ Petitions No. 12154 of 1991, 8898 of 1991 and 8811 of 1996. For facility of dictating judgment facts are being taken from CWP No. 12154 of 1991.

In this writ petition, challenge has been laid to a notification issued under Section 4 of the Land Acquisition Act, 1894, (in short the Act) on March 11, 1977 proposing to acquire 3 Acres, 1 Kanal and 14 Marlas of land, for a public purpose, namely, construction of New Mandi Township at Pathankot. Challenge has also been laid to a Notification issued under

Section 6 of the Act on March 14, 1977. It is necessary to mention here that while issuing above said notifications, provisions of Section 17 of the Act were also invoked. Challenge has also been laid to the Award passed on September 23, 1986.

It is apparent from the records that the petitioners earlier also filed a Civil Writ Petition No. 5726 of 1982 with a prayer to quash the notifications issued under Sections 4 and 6. That writ petition was allowed in their favour vide order dated January 31, 1983 and the notifications in question were quashed. The respondent -State went to the Hon'ble Supreme Court and in Civil Appeal No. 2334 of 1986, vide order dated March 6, 1987, judgment, passed by the High Court, was quashed and the acquisition was upheld. Concluding portion of the judgment, passed by the Supreme Court, reads thus:

“That the judgment and order dated 31st January, 1983 of the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 5726 of 1982 be and is hereby set aside and in place thereof an order dismissing the above mentioned Writ Petition filed in the Punjab and Haryana High Court be and is hereby substituted;

2. That the parties herein shall bear their own costs of the said appeal in this Court.

3. That the order of this court dated 10th December, 1986 passed in the civil miscellaneous petition No. 14226 of 1983 in the said appeal directing the maintenance of status quo, be and is hereby vacated. Hence the Hon'ble Supreme Court has

already adjudicated the matter in view of the respondents.

Question to release the land at this stage does not arise.”

When the matter was pending before the Supreme Court, Award was passed on September 23, 1986. The petitioners thereafter kept mum and filed this writ petition only in the year 1991 to lay challenge to the above said notifications and the Award.

It is primary grievance of the petitioners that the Award was passed only with regard to land and nothing was provided therein so far as super-structures are concerned. Be that as it may, in view of the judgment of the Hon'ble Supreme Court in **Mohanji and another v. State of U.P. And others**, JT 1995 (8) S.C. 599, which was followed thereafter in the case of **State of Punjab and others v. Sharan Pal Singh and others**, Civil Appeals Nos. 11850-53 of 1995, decided on December 14, 1995, impugned notifications and the Award cannot be quashed. The petitioners, if aggrieved for non-grant of compensation, for the superstructures could have filed claim under Section 18 of the Act.

Further contention of counsel for the petitioners that by shifting the proposed road to the adjoining area, the constructed house of the petitioners could have been saved is of no substance at this stage. This plea was raised before the Supreme Court and was rejected while upholding the issuance of notifications. It is also contended by counsel for the petitioners that on a representation made by them, the matter was reconsidered by the competent authority. A report was made by the O.S.D. , Revenue Department, on May 22, 2007, stating that the road could not be constructed

at the spot on account of resistance caused by the petitioners and further that the proposed alternative road, may be more suitable. At this stage, it is not possible for us to interfere in the acquisition, which had become final in the year 1987. The area could not be used for the purpose for which it was acquired because firstly the acquisition proceedings were quashed by this Court and thereafter the Hon'ble Supreme Court upheld the acquisition in the year 1987. The construction raised was in existence when the acquisition was upheld. It is not case of the petitioners that in the intervening period, they have raised the construction. The road could not be constructed because of resistance shown by the petitioners. No case is made out for interference. This writ petition is dismissed.

CWP No. 8898 of 1991:

So far as CWP No. 8898 of 1991 is concerned, in this case it is primary grievance of the petitioners that Award and the Notifications, vide which the land was acquired, be quashed because no compensation was awarded for the super-structures when award was passed on April 11, 1991.

For the reasons given in the earlier part of this judgment, no case is made out for interference in this case also. Dismissed.

CWP No. 8811 of 1996:

By filing CWP No. 8811 of 1996, notification issued under Section 4 of the Act on June 7, 1993, and further notification issued under Section 6 of the Act on January 3, 1994, are under challenge. Further challenge has been laid to an award passed on February 14, 1996. This petition was filed in the month of June, 1996. In view of ratio of the judgment in **Star Wire(India) Ltd. v. State of Haryana**, (1996) 11 SCC

698, this writ petition having been filed after passing of an award cannot be entertained. Furthermore, by the time this writ petition was filed, most of the area was utilised for the purpose for which it was acquired. Dismissed.

(JASBIR SINGH)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

December 03 , 2010.
DKC